

BORALASKIN LAW LIBRARY



3 1761 10631421 4

Store
KF ;
5698 Makuch, Stanley M
A4 Cases & materials on land
M36 use planning. Rev., 1977
1977
v.1

Store
KF
5698
A4
M36
1977
v.1


LAW LIBRARY

SEP 15 1977

**FACULTY OF LAW
UNIVERSITY OF TORONTO**

CASES & MATERIALS
ON
LAND USE PLANNING
1977

Prepared by Professor S.M. Makuch
Revised, 1977, with the
assistance of D. D'Oliveira
and G. Caplan



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

TABLE OF CONTENTS

	<u>Page</u>
<u>CHAPTER I</u> <u>INTRODUCTION TO PLANNING</u>	
J. Jacobs, The Death and Life of Great American Cities	1
Principles and Practice of Urban Planning	4
Design for Development: The Toronto-Centred Region	17
Design for Development: Toronto-Centred Region Program Statement	30
White, "Ontario's Land Use Legislation" in 1974 Law Society of Upper Canada Special Lectures	38
Re Parkway Belt West Plan	41
Union Gas Ltd. v. Corporation of Township of Dawn; Tecumseh Gas Storage Ltd. v. Township of Dawn	55
Metroplan, Concept & Objectives: A Summary	65
City of Toronto Official Plan	68
Ontario Economic Council, Subject to Approval	79
 <u>CHAPTER II</u> <u>THE PRIVATE CONTROL OF LAND USES</u>	
 A. <u>Restrictive Covenants</u>	 81
Tulk v. Moxhay	81
London County Council v. Allen	82
Stilwell v. Blackman	87
Shepherd Homes Ltd. v. Sandham (No. 2)	88
Earl of Leicester v. Wells U.D.C.	88
Wrotham Park Estate v. Parkside Homes	88
One Twenty-Five Varsity Road Ltd. v. Twp. of York	89
Re Sekretov and City of Toronto	92
In re McKillop and Vancouver	97
 B. <u>Building Schemes</u>	 97
Robinson, "Restrictive Covenants"	97
Hyett, "Restrictive Covenants: an Appraisal of Building Schemes"	98
Scharf v. Mac's Milk Ltd.	102
McGregor et al. v. Boyd Builders Ltd. et al.	104
Re Lorne Park	111
Re Zierler	112
Shen Investments Ltd. v. Mosca	112
Note	112
Re Dolphin's Conveyance	113
Texaco Antilles Ltd. v. Kernochan	117
 C. <u>Modification of Restrictive Covenants</u>	 117
The Conveyancing and Law of Property Act	117
Re Beardmore	118
Re Beardsley's Application	121
 D. <u>Nuisance</u>	 122
Spur Industries, Inc. v. Del E. Webb Dev. Co.	122
Bottom v. Ontario Leaf Tobacco Co. Ltd.	126
Boomer v. Atlantic Cement Company	129
Note	134

CHAPTER III ZONING AND LAND USE CONTROL

Makuch, "Zoning: Avenues of Reform"	135
City of Toronto Zoning By-law 20623	136
Milner, Community Planning	165
Village of Euclid v. Ambler Realty Co.	166
R. v. Brown Camps Ltd.	170
City of Barrie v. Brown Camps Residential and Day Schools	173
R. v. Bell	176
R. v. Bell	184
Mueller et al. v. Twp. of Tiny	192
The City of Toronto Act, 1975 (No. 2)	194
Re Cadillac Development Corp. and City of Toronto	194
Re Wall & Redekop Corp. Ltd. and City of Vancouver	204
Scarborough Township v. Bondi	206
City of Ottawa v. Royal Trust Co.	209
Re Twp. of North York Restricted By-law	222
City of Toronto v. Polai	227
Polai v. City of Toronto	237
R. v. Gibson Ex parte Cromiller	238

CHAPTER IV ZONING REFORMS AND DEVELOPMENT CONTROL

On Building Downtown: Design Guidelines for the Core Area	240
City of Toronto Official Plan: Proposed Amendment No. 39	253
City of Toronto Official Plan	255
Proposed Zoning Ordinance, Rome, N.Y. Art. XI in Robert M. Anderson, 4 American Law of Zoning	257
The Municipal Amendment Act	260
Re Mississauga Golf and Country Club	261
Re O'Donnell and City of Belleville	265
Town of Uxbridge v. Timber Brothers Sand & Gravel Ltd.	266
Makuch, "Zoning: Avenues of Reform"	270
Soo Mill and Lumber Co. Ltd. v. City of Sault Ste. Marie	273
Sanbay Developments Ltd. v. City of London	276
B.P. Canada Ltd. et al. v. Corporation of the City of Brampton	279
Re Walmar Investments Ltd. and City of North Bay	284
Re Cogan and City of Toronto	288
Letter on Holding By-law and Development Control	295
Form of Standard London Development Agreement	300
Form of Standard Burlington Development Agreement	302
Form of Standard Scarborough Subdivision Agreement	304
Canadian Institute of Public Real Estate Companies et al. v. Corporation of the City of Toronto	318
Re City of Toronto By-law 234-75	325
City of Toronto Planning Board Report	327
The City of Winnipeg Act	349
The Planning Act	354
The Halifax City Charter	356
"Not at a Council's Whim", Globe & Mail	357

CHAPTER V PREEXISTING RIGHTS OF LANDOWNERS

City of Toronto v. Wheeler	359
City of Ottawa et al. v. Boyd Builders Ltd.	359
Charter v. City of Dartmouth	364
R. v. City of Barrie, Ex parte Bernick	374
Re Overcomers Church and City of Toronto	377
Re Cambridge Leaseholds Ltd. and City of Toronto	382
Re Cambridge Leaseholds Ltd. and City of Toronto (No. 2)	391
Re Cambridge Leaseholds Ltd. and City of Toronto (No. 3)	394
City of Halifax v. Hollett	398
Re David Gallo Building Co. Ltd. and City of Toronto	401
Re 261532 Development Corp. Ltd. and City of Toronto	407
Re Governors of Dalhousie College & University and City of Halifax	411
Re Triforce Construction Ltd. and City of Toronto	411
Re Dillabough et al. and Township of Esquimalt	412

CHAPTER VI CONTINUING RIGHTS OF LANDOWNERS
NON-CONFORMING USES

Toronto v. Roman Catholic Separate School Board	415
Central Jewish Institute v. Toronto	417
Re Wilmot and Kingston	419
Wilmot v. Kingston	423
Regina ex rel. Skimmings v. Cappy	423
Regina v. Rutherford's Dairy Ltd.	427
Gayford v. Kolodziej et al.	428
O'Sullivan Funeral Home Ltd. v. City of Sault Ste. Marie and Evans	430
City of Los Angeles v. Gage	431
Planning Act	434

CHAPTER VII PROCEDURES & PLANNING

Wiswell v. Metropolitan Corporation of Greater Winnipeg	436
Re Buhler and Rural Municipality of Stanley	444
Re Florence Nightingale Home and Scarborough Planning Bd.	447
Re Zadrevec and Town of Brampton	450
Re McMartin et al. v. City of Vancouver	455
Dempster's Bread v. City of Toronto and Campbell	463
Re Orangeville Highlands Ltd. and A.-G. of Ontario	471
Re Cummer-Yonge Investments (1970) Ltd. and A.-G. Ontario et al.	475
Chadwill Coal Co. Ltd. et al. v. Treasurer and Minister of Economics and Intergovernmental Affairs	478
Re Maurice Rollins Construction Ltd. and Township of South Fredericksburgh	482
Wellbridge Holdings Ltd. v. Metropolitan Corporation of Greater Winnipeg	490
Brodie v. City of Halifax (No. 2)	
Draft Factum of Applicants in Brodie v. City of Halifax (No. 2)	500
Arte Shoppe Rezoning Application	506
People and Planning: Report of the Committee on Public Participation in Planning	513
Attorney General of Nova Scotia et al. v. Bedford Service Commission	519

CHAPTER VIII PLANNING REVISITED

Banfield, "The Uses and Limitations of Metropolitan Planning in Massachusetts	529
Residents Advisory Committee Brief on the Part 1 General Proposals, Central Area Plan Review	533
Jones, "The Nature and Purpose of the Official Plan"	548
Lay, "The Zoning Law as Icon"	555
Greenspan & Vaughan, "How The Zoning Game is Played: A Look at Land Use Procedures"	559
Clark, "The Crisis in Canadian City Planning"	564

CHAPTER IX PLANNING AND LAND VALUE

Romanica v. Greater Winnipeg Water District	567
Stoneman v. City of Halifax	579
Belfast Corporation v. O.D. Cars Ltd.	585
R. v. Gibson, Ex p. Cromiller	589
Regina Auto Court v. City of Regina	590
Re McGregor and Scarborough	591
Re Etobicoke By-law 1332	596
Re Toronto Restricted Area By-law 348-73	599
Re Simpson and City of Vancouver	600
Re Farlinger Developments Ltd. and East York	604(d)
Forum: The Role of the Professions in the Future Environment in 1974 Law Society of Upper Canada Special Lectures	614

CHAPTER X PLANNING - APPEALS

Ontario Municipal Board, Rules of Procedure	616
Re Cloverdale Shopping Centre Ltd. and Township of Etobicoke	623
Re Hopedale Developments Ltd. and Town of Oakville	632
Re Township of North York Restricted By-law	636
Re Borough of Scarborough and Minister of Housing for Ontario et al.	638
Jowell, "The Limits of the Public Hearing as a Tool of Urban Planning"	642
Re Merrens et al. and Municipality of Metropolitan Toronto	648
Re Town of Vaughan Official Plan	656
Re Township of Caledon Official Plan	668
Re Lord Nelson Hotel Appeal	670
Re East York By-law 7633	683
Re Etobicoke By-law 14508	685
Re Spadina Expressway	689
Statement by the Prime Minister of Ontario re the Spadina Expressway	701
Tollefson v. Twp. of Gloucester	704
Re Ontario Restricted Area By-law 348-73	710
Forum: The Role of the Professions in the Future Environment in 1974 Law Society of Upper Canada Special Lectures	725

CHAPTER XI COMMITTEE OF ADJUSTMENT

Committee of Adjustment - An Indispensable Tool	731
The Planning Act	733
J. B. Milner, Community Planning	735
Re London By-law, Western Tire and Auto Supply Ltd. and Weinstein	739
Ontario Teachers Federation v. Duncan	742
Re North Hill Homeowners' Association, 1971	744
Re North Hill Homeowners' Association, 1972	746
Re Goncalves and Luciki	749
Re University of Toronto Application, 1973	750
Re Mildred Greenfield et al., 1976	752

Re Perry and Taggart	753
Re Burgin et al. and Township of King	756
Re Township of Hamilton and Rito Investments Ltd.	758
Re Dale's Application, 1973	759
Re Westmount Park Road Homeowners' Association, 1973	763
Re Vardaro et al., 1973	767
Re Sussex-Ulster Residents' Association, 1973	772
Polgrain et al. v. Ivanhoe Corp. et al.	774
Min-en Laboratories Ltd. v. Board of Variance of North Vancouver	776

CHAPTER XII STANDING

Mullan, "Standing After McNeil"	782
L'Association des Proprietaires des Jardins Tache Inc. v. Les Entreprises Dasken Inc.	793
Riverview Heights Inc. v. City of Mississauga	800
Bedford Park Homeowners' Association v. Davmark Developments Ltd.	805